

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

MOBILEMEDIA CORPORATION, et al.

Applicant for Authorizations and Licensee
of Certain Stations in Various Services

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) WT Docket No. 97-115
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To: The Commission

**COMMENTS IN SUPPORT OF
MOTION FOR WAIVER AND APPLICATION FOR REVIEW
REGARDING MOBILEMEDIA CORPORATION**

The Official Committee of Unsecured Creditors (the "Committee") of MobileMedia Corporation and its subsidiaries (collectively, "MobileMedia" or "the Company"),^{1/} by its attorneys, hereby submits these comments in support of the Motion For Waiver and Application for Review filed by MobileMedia in the above-captioned matter (the "Review Application"). The Committee represents thousands of unsecured creditors of MobileMedia, to whom MobileMedia owes approximately \$500 million.^{2/}

^{1/} The Committee is comprised of all of the unsecured creditors of MobileMedia, and was appointed by the United States Trustee in the consolidated bankruptcy reorganization cases filed by MobileMedia on February 10, 1997.

^{2/} Given the Committee's financial interest in the outcome of the Review Application and the hearing proceeding, the Committee respectfully requests that the Commission treat the instant pleading as informal comments in support of the Review Application. The presiding judge below found the Committee's comments "of assistance." FCC 97M-80, at 1 n.1 (May 7, 1997). To the extent that leave is necessary to file these comments, such leave is hereby requested.

MobileMedia's Review Application seeks a waiver of Section 1.301(b) of the Commission's rules^{3/} to allow Commission review of an order issued by the presiding judge in the above-captioned hearing, denying a request by MobileMedia for a stay of the qualification hearing.^{4/} The Committee filed comments in support of MobileMedia's stay request, which comments are attached hereto and incorporated herein.

The compelling interest in protecting MobileMedia's innocent creditors requires that the Commission grant a waiver of its rule and consider the Company's interlocutory appeal of the presiding judge's denial of the Company's stay request. The Commission has stated that it will grant a waiver of Section 1.301(b) "where the proceeding involves basic and far reaching considerations of public policy and vital concerns relating to the public interest which could not otherwise adequately be protected."^{5/}

The Committee submits that the "basic" question here is whether, in applying the deference to federal bankruptcy law required by the Second Thursday doctrine,^{6/} the FCC must protect innocent creditors of a publicly traded company in the same manner that it is required to protect innocent creditors of a privately held concern. The "far reaching" public

^{3/} 47 C.F.R. § 1.301(b) (1996).

^{4/} Memorandum Opinion and Order, FCC 97M-80 (May 7, 1997). Waiver of Section 1.301(b) is necessary because the presiding judge subsequently denied a request by the Company for permission to appeal his May 7 order. Memorandum Opinion and Order, FCC 97M-83 (May 13, 1997).

^{5/} Communications Satellite Corp., 32 F.C.C.2d 533 (1971); see Elinor Lewis Stephens, 9 FCC Rcd 5259 (Rev. Bd. 1994).

^{6/} See LaRose v. FCC, 494 F.C.C.2d 1145, 1146 (D.C. Cir. 1974); Second Thursday Corp., 22 F.C.C.2d 515, on reconsideration, 25 F.C.C.2d 112 (1970).

policy implications of this fundamental question, particularly as it relates to MobileMedia, are readily apparent. The lion's share of the \$500 million debt owed by MobileMedia to its unsecured creditors is held in MobileMedia bonds, many of which are held by institutional investors, including pension funds, mutual funds, and life insurance companies. These investors are investing the retirement and personal saving of tens of millions of ordinary Americans. Accordingly, application of the Second Thursday doctrine to a public company would here serve to protect the interest of members of the general public.

Because the Second Thursday doctrine recognizes the public interest in protecting creditors and in assuring comity with the bankruptcy courts, any decision that serves to render the doctrine unavailable to a large class of creditors -- particularly creditors who directly represent the interests of the general public -- necessarily raises substantial public policy concerns. Given the size of the debt owed by MobileMedia and other large public companies, the question of whether Second Thursday applies to public companies involves fundamental issues that must be addressed by the Commission in the first instance.

MobileMedia's limited stay request is directly linked to the expected Second Thursday resolution of this proceeding. The Committee is working actively with the Company and the secured lenders to bring about a quick reorganization under the bankruptcy laws, pursuant to which there will be no "wrongdoers' realization of benefit."^{2/} Without a stay of the hearing, however, progress toward this goal would be impeded, as MobileMedia's new management would be diverted to deal with hearing issues. The continuation of the

^{2/} LaRose, *supra*, 494 F.2d at 1149.

hearing -- assuming an eventual Second Thursday outcome -- would also waste Company resources and cash that are supposed to be preserved to assure "innocent creditors' recovery." ^{8/}

CONCLUSION

For the foregoing reasons, the Official Committee of Unsecured Creditors of MobileMedia, on behalf of the millions of individuals whose retirement and personal savings will ultimately be impacted by the Commission's decision, respectfully requests that the Commission grant MobileMedia's Review Application.

Respectfully submitted,

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MOBILEMEDIA CORPORATION

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May 15, 1997

^{8/} Id. Commission staff resources would also, of course, be wasted.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 1997, I caused copies of the foregoing COMMENTS IN SUPPORT OF MOTION FOR WAIVER AND APPLICATION FOR REVIEW REGARDING MOBILEMEDIA CORPORATION to be hand-delivered to the following:

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